



POLICE DEPARTMENT

November 18, 2015

MEMORANDUM FOR: Police Commissioner

Re: Captain Craig Edelman
Tax Registry No. 932592
Narcotics Borough Manhattan North
Disciplinary Case No. 2014-11592

The above-named member of the Department appeared before me on August 26 and September 23, 2015, charged with the following:

1. Said Lieutenant Craig Edelman, on or about May 23, 2013, at approximately 0220 hours, while assigned to the 73rd Precinct and on duty, [REDACTED], abused his authority as a member of the New York City Police Department in that he stopped Person A without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 1 – STOP AND FRISK

2. Said Lieutenant Craig Edelman, on or about May 23, 2013, at approximately 0220 hours, while assigned to the 73rd Precinct and on duty, [REDACTED], abused his authority as a member of the New York City Police Department in that he frisked Person A without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 2 – STOP AND FRISK

The Civilian Complaint Review Board (CCRB) was represented by Raasheja Page, Esq. Respondent was represented by Louis LaPietra, Esq.

Respondent pleaded Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty.

SUMMARY OF THE EVIDENCE PRESENTED

It is not disputed that on May 23, 2013, Respondent held the rank of lieutenant and was assigned to the 73 Precinct. He and his driver, Police Officer Julio Batista, were in uniform and seated inside an unmarked Department car when, at about 2:00 a.m., they observed Person A walking on the street with other men. They subsequently observed Person A inside a New York City Housing Authority (NYCHA) building [REDACTED], looking out of a hallway window [REDACTED]. The officers then entered the building, walked up the stairway [REDACTED], and encountered Person A who was standing in the hallway. Respondent and Batista approached Person A and Respondent subsequently frisked Person A.

Since Person A did not appear to testify at this trial,¹ the CCRB Administrative Prosecutor offered the statements he made at his recorded CCRB interview as hearsay evidence [CCRB Exhibit (CCRBX) 1]. At his interview, Person A stated that he was walking from a store with three friends. They were walking slowly, laughing and joking, when he noticed Respondent and Batista watching them from inside their car. Person A then walked to [REDACTED] because his grandmother resided in that building and he wanted to tell her that he would be spending the night with his friends. Respondent and Batista followed him in their car as he walked to [REDACTED]. Person A entered the building _____

¹ The Administrative Prosecutor stated that CCRB had been unable to contact Person A at either the phone number or the address that he had provided to CCRB.

and walked up to the [REDACTED] floor where his grandmother's apartment was located. He looked out of a window in the hallway to see if the police car was still outside [REDACTED]. He entered his grandmother's apartment, had a brief conversation with her and his cousins, and then left the apartment.

After the door to his grandmother's apartment had closed, and while he was in the hallway walking toward the exit, Respondent and Batista came up the stairs, approached him and asked him what he was doing. Respondent pushed Person A against the wall and proceeded to pat down his arm, coat pockets, pants pockets, and legs. He then reached into Person A's jacket pockets and pants pockets and removed his keys and identification. Respondent then pulled Person A's waistband and underwear back. Person A told the officers that what they were doing was wrong. Respondent replied that he could do whatever he wanted to do. The officers asked Person A if he lived in the building and he told them that he was visiting his grandmother. He brought them to the door to his grandmother's apartment. Person A's cousin came to the door and verified his identity. The officers then left. Person A's criminal record was offered into evidence [Respondent's Exhibit (RX) A].

Respondent testified that the area surrounding [REDACTED] is known for violent crimes and gang activity. After Respondent saw someone inside [REDACTED] walking back and forth in front of a hallway window, he and Batista parked their car in front [REDACTED] and entered the building to ascertain whether the person had a legitimate reason to be inside the building or was trespassing. The officers walked up the stairs and encountered Person A standing in a hallway. Person A appeared to be intoxicated. When Respondent asked Person A to provide identification, Person A responded, "I'll have your job, faggot. I'll have your job, bitch. Go fuck yourself."

Respondent testified that Person A adopted an aggressive physical stance which he described as "blading [his] body, almost like a fighting stance with one side back . . . and the other side forward." Person A's hands were in front of him and he kept moving them toward his waistline. Respondent felt threatened because based on Person A's hand movements he suspected that Person A might be concealing a weapon in his waist area. Respondent then frisked Person A by patting his waistband and pocket areas but Person A had no weapon on his person. Person A finally provided identification and told the officers that he was visiting his grandmother. Respondent found it odd that Person A would be visiting his grandmother at 2:00 a.m. and so he asked Person A to show him which apartment was his grandmother's. When Respondent knocked on the door a woman answered and confirmed that she knew Person A.

Batista testified that he and Respondent were patrolling in the area of [REDACTED] [REDACTED] because a number of shooting incidents had recently occurred in that area. As they passed by [REDACTED] Respondent pointed out a person at a window. Batista saw the person peeking out of the window numerous times. Respondent and Batista then entered the building to ensure that the person was not trespassing. They encountered Person A in a hallway and asked him why he was in the building. Person A initially refused to answer this question. Person A was belligerent and his breath smelled of alcohol. Person A threatened to file a lawsuit against them and to take away their pensions. Person A kept shifting his body to his right side and he moved his right hand toward his waist area. Respondent frisked the right side of Person A's waist. Person A eventually informed them that he was in the building to visit his grandmother and he directed them to her apartment. The officers had to ask Person A for identification multiple times before Person A complied with the

request. Person A finally provided identification and Batista prepared a Stop, Question, and Frisk Report. Batista explained that he fears for his safety whenever a suspect blades his body and moves his hand toward his waistband or pocket area. Batista did not observe any type of bulge on Person A's clothing other than what might have been a cell phone. Person A never attempted to attack the officers and Person A did not verbally threaten them with physical harm.

FINDINGS AND ANALYSIS

It is charged that Respondent abused his authority in that he stopped and frisked Person A without sufficient legal authority. It is not disputed that [REDACTED] is a NYCHA building; that Person A entered the building at 2:00 a.m. and looked out of a hallway window to see if the police car occupied by Respondent and Batista was still outside (CCRBX 1 p. 55-57); and that when Respondent and Batista encountered Person A, he was standing alone in the hallway in front of a staircase [REDACTED] (CCRBX 1 p. 74) and the door to his grandmother's apartment was closed (CCRBX 1 p. 58).

As to the charge that Respondent abused his authority in that he stopped Person A without sufficient legal authority, Patrol Guide Procedure No. 212-60 authorizes uniformed members of the Department (UMOS) who encounter "potentially unauthorized persons within NYCHA property" to approach the person and ask the person whether he is a resident, visiting a resident, or has business in the building.² Person A stated at his CCRB interview that when Respondent and Batista encountered him standing alone in the hallway, Respondent asked him, "What are you doing?" and that he had responded, "I'm not doing nothing man." (CCRBX 1 p. 75) Person A also stated that he

² Patrol Guide Procedure No. 212-60(12).

was asked "Where are you coming from?" (CCRBX 1 p. 76-77) and that "they wanted to obtain my ID."

In her closing argument, the Administrative Prosecutor argued that when Respondent and Batista "encounter Person A and said 'Oh, who are you? Can I see some ID?' When he said 'I don't have to talk to you and I don't have to give you my ID,' that should have been the end of it." The Administrative Prosecutor's position is not supported by New York case law which recognizes that UMOS have the right to question a person who is found inside a common area of a NYCHA building as to whether he is a resident and to require the person to produce identification so that the UMOS can ascertain whether the person is a trespasser.

The Appellate Division First Department has held³ that a person who is standing in the vestibule of a NYCHA building that has a history of drug activity may be approached by police, questioned about residency, and required to produce identification, even if that person has not engaged in conduct indicative of criminality. The Administrative Prosecutor offered no evidence to refute Respondent's and Batista's testimony that the area in which [REDACTED] is located is known for shooting incidents, violent crime and gang activity.

Moreover, Person A admitted that after he walked up to the [REDACTED] floor, he looked out of a window to see if Respondent and Batista were in front [REDACTED].

This admission corroborates Respondent's and Batista's testimony that because they saw

³ *People v. Hendricks*, 43 AD3d 361, 841 NYS2d 94 (2007). Although a trial judge has held, in *People v. Ventura*, 30 Misc3d 587, 913 NYS2d 543 (2010), that police are not permitted to stop and question a person who is standing in the lobby of a NYCHA building for the purpose of determining whether the person lives in the building if there is no evidence of prior criminality having taken place in the building, the facts in that case differ from the facts presented here because Person A was encountered in a hallway [REDACTED] of the building, not in the lobby.

person looking out of a hallway window at 2 a.m., their suspicions became aroused that criminal activity might be taking place inside.

Based on the above, I find that the Administrative Prosecutor did not meet her burden of proving that Respondent abused his authority by stopping Person A without sufficient legal authority.

The charge that Respondent abused his authority by frisking Person A without sufficient legal authority presents the question of whether Person A's uncorroborated hearsay statement is more credible than the trial testimony of Respondent and Batista. Although hearsay is admissible at Department disciplinary trials and may form the sole basis for making findings of fact,⁴ even where hearsay is supported by circumstantial evidence it may be insufficient to support a finding of guilt in a disciplinary trial that involves close questions of credibility.⁵ The determination of this charge involves close questions of credibility.

Respondent and Batista asserted that Respondent had only patted the outside of Person A's waist area and pockets and that he only did this because Person A had made physical movements that indicated that he might have a weapon secreted in his waist area. Respondent and Batista both testified that Person A had "bladed" his body by shifting his body to his right side and that he moved his right hand toward his waist area.

A police officer may conduct a pat down frisk of the outer clothing of a person who has been lawfully stopped where, based on the officer's personal observations, the officer has reason to believe that the person may be armed and presently dangerous.⁶ Respondent's and Batista's assertion that Respondent patted Person A's waist and pockets only after Person

A bladed

⁴ RCNY Title 38, 15-04(e)(1).

⁵ *Epler v. Van Alstyne*, 93 AD2d 930, 462 NYS2d 320, 1983 NY App Div LEXIS 17824.

⁶ Legal Bureau Bulletin, "Stop, Question and Frisk," Vol. 32, No. 2, p. 2 (Sept. 2002).

his body and moved his hand toward his waist area in a manner that indicated that he might be hiding a weapon in his waist meets this legal standard.

In contrast to the trial testimony of Respondent and Batista, Person A asserted in his statement to CCRB that as soon as Respondent and Batista came out of the stairwell and encountered him in the hallway, Respondent asked him, "What are you doing?" he responded, "I'm not doing nothing man," and Respondent immediately pushed him against the wall and searched him. Person A further asserted that Respondent not only patted down his entire body, he also reached into his front and back pockets, removed his keys and identification, and pulled back the waistband on his underwear. (CCRBX 1 p. 75-81). Person A did not assert that Respondent had done this to him because Respondent had an axe to grind against Person A as the result of a previous encounter. On the contrary, Person A told his CCRB interviewer that he had "never seen the lieutenant before a day in my life, never." (CCRBX 1 p. 57).

Person A's failure to appear to testify

Although the constitutional right of confrontation is limited to criminal proceedings, the United States Supreme Court has held that, "In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses."⁷ The New York Court of Appeals has recognized a limited right to cross-examine adverse witnesses at administrative hearings and has held, in a case involving an NYPD disciplinary trial, that one of the factors a hearing officer should consider in assessing whether due process requires the production

⁷ *Goldberg v. Kelly*, 397 US 254, 269.

of a particular witness for cross-examination is the potential utility of trial confrontation in the fact-finding process.⁸

Although the Administrative Prosecutor had the opportunity to cross-examine Respondent and Batista, since Person A did not appear to testify at this trial, Respondent's attorney did not have the opportunity to cross-examine him regarding statements he made at his CCRB interview and regarding his extensive conviction record.

At his CCRB interview, Person A stated that, after he told Respondent that he^a was "coming from my grandmother's" apartment, "so I go and not to go to take them to my drugs to show them where I'm coming from." (CCRBX 1 p. 59). This statement is significant because Person A's conviction record (RX A) includes eight convictions for Criminal Possession of Marijuana in the Fifth Degree and a conviction for Criminal Sale of Marijuana in the Fourth Degree, as well as a conviction for Criminal Possession of a Firearm and a conviction for Attempting to Resist Arrest.

Moreover, since all but one of the arrests which led to these convictions were made by NYPD officers [REDACTED], the fact that Respondent's attorney was not able to question Person A as to whether his previous arrests had resulted in a bias against [REDACTED] police officers is also not insignificant.

Finally, Respondent's attorney also did not have the opportunity to cross-examine Person A regarding a statement he made at his CCRB interview that he became "mad" at Respondent, not for supposedly having pushed him up against a wall and searched him for no reason, but because, according to Person A, when no one quickly opened the door of his grandmother's apartment after he knocked on the door, Respondent had kicked the door, an action which Person A considered "disrespectful" and which he claimed had "scared" his

⁸ Gordon v. Brown, 84 NY2d 574, 620 NYS2d 749, 1994 NYLEXIS 4196.

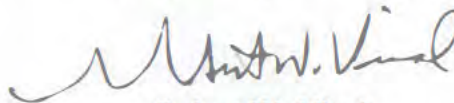
grandmother and his cousins (CCRBX 1 p. 59-61). Because Person A did not appear to testify at this trial, Respondent's attorney did not have the opportunity to question him as to whether he had invented the story that he told his CCRB interviewer, that Respondent had put him up against a wall and removed items from his pockets, because he was still angry at Respondent for kicking his grandmother's door and frightening her and his cousins.

Based on the above, I find that Person A's uncorroborated hearsay statements do not constitute sufficiently credible evidence to support a guilty finding. Therefore, Respondent is found Not Guilty.

APPROVED

JAN 07 2016
William J. Bratton
WILLIAM J. BRATTON
POLICE COMMISSIONER

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner – Trials